

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

J.S. (L.S.),)	
)	
Appellant,)	OSPI 336-13
)	
vs.)	DECISION AND ORDER
)	
WHITEHALL HIGH SCHOOL DISTRICT,)	
)	
Respondent.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

PROCEDURAL HISTORY

J.S. (hereafter "Student") received a three day in-school suspension for allegedly sending text messages that were sexual in nature to another student during a class. Student and his father asserted the Whitehall High School District (hereafter "District") administrators did not follow District policies with regard to the suspension, alleged violations of due process, equal protection, and other allegedly improper actions on the part of school administrators in response to this incident. The student was allowed to bring a complaint before the Whitehall Board of Trustees on the issue of whether district administrators followed policy, but not regarding the validity of the suspension. In a closed session of the Board, the Trustees determined that the administrators had followed district policy and procedures in the disciplinary action.

Student and his father appealed the Trustees' decision to the Jefferson County Superintendent of Schools on June 20, 2013. County Superintendent Garry Pace dismissed the appeal for lack of jurisdiction by Dismissal Notice dated July 8, 2013.

Student and his father appealed the County Superintendent's decision to Montana Superintendent of Schools, Denise Juneau, on August 7, 2013.

STATEMENT OF FACTS

1. Student was enrolled at the Whitehall District High School during the 2012-2013 school year.
2. On April 25-26, 2013, text messages were sent to a female student during a geometry class, some of which were sexual in nature.
3. Student and other male students were passing iPads around and typing in messages, some of which were sent to the female student.
4. Other students identified Student and other male students in the class as having passed the iPads around and typing messages.
5. Student admitted typing on the iPads but denied authorship of all of the offensive messages and would not identify other students involved.
6. District administrators, Student, and Student's parents discussed the incident and the administrators ultimately decided Student would receive a three day in-school suspension.
7. Student was informed he could serve the in-school suspension in an alternate school setting and was given the opportunity to make up all missed class assignments.
8. Student served a half-day suspension in the alternate setting, but then was voluntarily kept out of school by his parents for the remainder of the three day suspension.
9. Student challenged the suspension alleging the district did not follow its policies.
10. The District's sexual harassment policy contained in the student handbook provides that following an investigation, a student found to have violated the sexual harassment policy may be suspended or expelled.
 - 11a. The District's policy on suspension does not provide for a hearing before the Board of Trustees.
12. The Whitehall District High School 2012-2013 student handbook "Student Due Process Rights" provides for a hearing before a hearing officer if a student accused of violating school policy denies the allegations. The decision of the hearing officer may be appealed to the Board of Trustees.

13. Student was not given an opportunity for a hearing before a hearing officer to challenge accusations of District policy violations.

14. Pursuant to the District's complaint policy, the Board allowed an informal hearing at a special meeting of the Board on May 20, 2013, regarding Student's complaint that district policies were not followed by administrators when handling matters related to his suspension.

15. The Board determined that district administrators had followed district policy in connection with the suspension of Student.

16. Student timely appealed the Board's decision to the County Superintendent.

17. The County Superintendent dismissed the appeal stating that it was not a contested case pursuant to Admin. R. M. 10.6.104.

ISSUE ON APPEAL

Whether the County Superintendent properly determined he did not have jurisdiction to hear this case.

STANDARD OF REVIEW AND AUTHORITY

The Superintendent of Public Instruction's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, Montana Code Annotated (MCA) and adopted by the Superintendent of Public Instruction in Administrative Rules of Montana (ARM) 10.6.125.

The Superintendent of Public Instruction may reverse or modify the county superintendent's decision if substantial rights of a party have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. ARM 10.6.125(4).

A county superintendent's conclusions of law are reviewed to determine if the interpretation of law is correct. *Baldrige v Board of Trustees*, 264 Mont. 199, 870 P.2d 711 (1994). A county superintendent's findings of fact are reviewed to determine whether they are clearly erroneous. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990). The Montana Supreme Court has described the review of the clearly erroneous standard as three "prongs:" Are the findings supported by substantial evidence? If there is substantial evidence to support a finding, did the trier of fact misconstrue the effect of the evidence? And if not misconstrued, a court may still determine a finding as "clearly erroneous" when "a review of the record leaves the court with the definite and firm conviction that a mistake has been committed." *Interstate Production Credit v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991) (internal citations omitted).

CONCLUSIONS OF LAW AND OPINION

Montana law provides that "except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, MCA, the county superintendent shall hear all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county." § 20-3-210, MCA.

Montana administrative rule provides that school controversy means a contested case or "any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for a hearing." Admin R. M. 10.6.102.

To determine if the issue on appeal constitutes a contested case and falls under the jurisdiction of a county superintendent, Student must show he had a statutory right to a hearing to determine if his legal rights, duties or privileges were violated.

The Montana Supreme Court has stated "an aggrieved person must be able to identify a legal right to contest a school board's decision; absent a statutory right to a hearing, a county superintendent does not have jurisdiction to hear a matter. *Roos v. Kircher Public School Board of Trustees*, 2004 MT 48 ¶10, 320 Mont. 346, 86 P.3d 39. "Simply because a disagreement occurs in a school does not mean the school district, the county or the state must provide a contested case hearing to resolve it. Just as there must be a cause of action in district court, there

must be a constitutional interest at stake or a statutory right to a hearing before the dispute rises to the level of contested case.” 2004 MT 48, ¶10 (citing *Bland v. Libby School District* (1993) (OSPI 205-92, 12 Ed. Law 76 at 78).

Student’s primary allegation is that the District did not follow its policies in connection with the discipline he received for violating district policy and wants his record cleared.

Student disciplinary suspension is determined by school administrators. §§ 20-5-202, 20-4-402 and 20-4-203 MCA. The trustees of a district must establish policies defining the authority and procedure for the administrators to follow. §20-5-202, MCA.

The District’s 2012-2013 student handbook lays out the procedure for a disciplinary suspension, providing for an informal hearing at which the student is advised of accusations and allowed to explain their actions. If the student denies the charges, the student is to be “informed of the witnesses” to the infraction. In this case, Student denied he violated the District’s sexual harassment policy, claims he was denied being given names of witnesses to the alleged infraction, and requested a hearing pursuant to the “student due process rights” procedure provided for in the District’s 2012-2013 student handbook. The District’s due process procedure includes a hearing before a hearing officer, with the decision of the hearing officer appealable to the Board of Trustees. Student claims that although he denied violation of the District’s sexual harassment policy and asked for a hearing pursuant to student handbook procedures, he was not afforded an opportunity for a hearing before a hearing officer.

District policy and procedure detailed in the 2012-2013 student handbook does not allow for a hearing before the Board of Trustees for a suspension. This apparently conflicts, or is at least confusing, with regard to the “student due process rights” in the same handbook.

Student then filed a complaint with the Board of Trustees pursuant to the District’s “Uniform Complaint Procedure” for use regarding any complaint arising in the district alleging violation of an individual’s rights. Student did not take the issue of his in-school suspension before the Board, but complained that administrators did not follow district policy.

At the Board’s review of Student’s complaint, in a closed session of the Board, there was apparently no review of the appropriateness of the suspension, just whether the administrators followed policy. The Board heard the complaint and a majority of the trustees found that district policy was followed. Student appealed the Board’s decision to County Superintendent Pace.

Montana law does not provide a right to a hearing to determine whether a district has failed to follow its policies. Student was given an opportunity to take his complaint before the Whitehall Board of Trustees, and although Student does not agree with the decision of the Board, he does not have a right to appeal that decision to the County Superintendent. “A county superintendent does not have jurisdiction over a matter absent a constitutional or statutory right to a hearing.” *Dupuis v. Board of Trustees, Ronan School District No. 30* 2006 MT 3, ¶ 10, 128 P.3d 1010 (citing *Roos* 2004 MT 48, ¶ 10.)

Although Student’s in-school suspension was not addressed in the decision of the Board, the actions of the administrators related to the suspension were the genesis of Student’s complaint heard by the Board. Suspensions of up to 10 days are under the purview and discretion of school administrators without requiring a hearing. § 20-5-202, MCA. Student’s allegation that the District’s procedure for due process was not followed by the administrators in suspending Student from class for three days is troubling. However, the underlying issues regarding this suspension, and decision of the Board that policy was followed, is not a “contested case” as defined by Admin. R. M. 10.6.102. There is no statutory or constitutional right to a hearing before the Board, and therefore the County Superintendent has no jurisdiction. Student raises other issues related to the texting incident, investigation and discipline, but presents nothing which falls under the jurisdiction of a county superintendent as a “contested case” pursuant to Title 20, MCA, as explained in the analysis above.

ORDER

Student was not entitled to a hearing before the Board of Trustees on the issues raised, and therefore the County Superintendent did not have jurisdiction to hear the matter. The County Superintendent’s dismissal of Student’s appeal for lack of jurisdiction is affirmed.

DATED this 9th day of December, 2013.

/s/ Denise Juneau
Denise Juneau,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 11th day of December, 2013, I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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/s/ Beverly J. Marlow
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